



## Switzerland

### Country Reports on Human Rights Practices - [2004](#)

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Switzerland is a constitutional democracy with a federal structure. The bicameral Parliament elects the seven members of the Federal Council (Swiss cabinet), the highest executive body, whose presidency rotates annually. Due to the nation's linguistic and religious diversity, the political system emphasizes local and national political consensus and grants considerable autonomy to the 26 individual cantons (states). The Parliament was elected in October 2003, allowing the Government to remain a coalition of the four major parties. A new Constitution took effect in 2000. The judiciary is independent.

The armed forces are a civilian-controlled militia based on universal military service for able-bodied males. There was virtually no standing army apart from training cadres and a few essential headquarters staff. Police duties are primarily a responsibility of the cantons, which had their own police forces that were under effective civilian control. A few members of the security forces committed isolated human rights abuses.

A highly developed free enterprise, industrial, and service economy strongly dependent on international trade allowed for a high standard of living for the country's 7.4 million residents. After shrinking by 0.4 percent in real terms in 2003, GDP was expected to grow by 1.8 percent during the year. Despite rising unemployment, wages increased by approximately 1 percent in real terms. Inflation remained subdued at 0.8 percent.

The Government generally respected the human rights of its citizens, and the law and judiciary provide effective means of dealing with individual instances of abuse. Cantonal police were involved in at least two deaths during the year. Police occasionally used excessive force, particularly against foreigners and asylum seekers. There continued to be reports of discrimination against foreigners. Trafficking of women for prostitution continued to be a problem, which the Government took steps to address.

## RESPECT FOR HUMAN RIGHTS

### Section 1

#### Respect for the Integrity of the Person, Including

##### Freedom From:

##### a. Arbitrary or Unlawful Deprivation of Life

There were no politically motivated killings by the Government or its agents; however, cantonal police forces killed at least two persons during police interventions, a 38-year old Sri Lankan citizen in Lausanne in April and a 35-year old Turkish national in Basel in June. In both instances, police said that they acted in self defense. The Basel prosecutor's office closed its investigation in July without bringing charges. The Lausanne investigation remained pending at year's end.

In April, a 40-year-old Italian national died in a Zurich hospital after violently resisting police trying to arrest him for having threatened an acquaintance. The district attorney's investigation remained pending at year's end.

In December, a 24-year-old African national succumbed to the head injuries resulting from his fall from the third-floor of a center for asylum seekers in Zug canton. According to police, the rejected asylum applicant had no permission to be on the premises and fell out of a window trying to escape a night-guard check. Zug judicial authorities opened an investigation by year's end.

Judicial authorities have consistently investigated and prosecuted killings by security forces, and there were no reports of lapses during the reporting period.

The Lucerne cantonal prosecutor closed the investigation of the 2003 death of a citizen with mental disabilities without bringing charges.

In February, a court in the French town of Colmar acquitted a Basel policeman on trial for killing Michael Hercouet in 2001 just over the border in France. The Court gave credence to the defendant's assertion of wrongly believing himself on Swiss territory. The Canton of Basel had previously settled civil claims with the victim's family.

On February 23, the Federal Tribunal upheld a 3-month suspended prison sentence for negligence of a Swiss physician for his involvement in the death of a Palestinian asylum seeker, who suffocated during his forced repatriation to Egypt in 1999. However, the court rejected a related civil suit seeking financial compensation for the victim's family.

The acquittal in May 2003 of four Bernese police officials charged for their role in the violent death of Cemal Gomec in 2001 became final after both the cantonal prosecutor-general and the victim's widow withdrew their appeals.

#### b. Disappearance

There were no reports of politically motivated disappearances.

#### c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution prohibits such practices; however, Amnesty International (AI) and the Swiss-based anti-racism platform "CRAN" reported during the year the occasional use of excessive force by police authorities. AI in its annual report highlighted several instances of police mistreatment of detainees, particularly foreigners and citizens of foreign origin. The cantons mentioned in particular are Geneva, Glarus, Zurich, and Bern. Whereas AI deemed the situation stable, CRAN saw police brutality and racism against blacks on the rise across the country. CRAN in particular accused Geneva police of heavy handedness, citing several alleged instances of black youths being forced to strip in public for body-cavity searches during counter-narcotic raids. The head of Geneva police confirmed that their anti-drug campaign launched in 2002 had led to a higher number of arrests among African nationals but that police had taken steps to raise human rights and cultural awareness among officers and internally investigate any instances of abuse. CRAN later issued a brochure explaining the rights of racial minorities when confronted with police violence, including appropriate police protocol. Cantonal police reaction has been positive, and some cantonal police units have expressed interest in obtaining the brochure as well.

In April, the Zurich district attorney's office halted criminal proceedings against a Zurich police officer, who in 2002 shot and seriously wounded an unarmed passerby while pursuing a burglar. The office's investigation found that the officer acted in full accordance with police regulations on the use of firearms and that a stray bullet hit the passerby. There were no further developments in the 2003 alleged police brutality case in Glarus canton. The decision of the out of canton prosecutor-general to halt the criminal investigation against the head of the Glarus criminal police has not been appealed.

There were no developments during the year in the case of Kurt von Allmen who got trapped by a police car in Zurich in 2002, causing injuries and the amputation of his leg.

In response to AI's concerns about reports of alleged police brutality against demonstrators during a G8 Conference in Evian in 2003, an independent Geneva parliamentary report published in May concluded that the police managed the spiraling violence adequately, limiting their intervention to the strict minimum.

AI also asserted that judicial investigations into instances of alleged police abuse of asylum seekers repeatedly failed to give them a fair hearing.

Prison conditions generally met international standards, and the Government permitted visits by independent human rights observers. Prison overcrowding continued to be a cause of concern, particularly in the Cantons of Geneva, Zurich, and Bern. In July, guards at Geneva's Champs-Dollon prison complained about working conditions when the facility built for 270 inmates was housing over 450.

Male and female, juvenile and adult prisoners, and pretrial detainees and convicted criminals were held separately. In some cantonal prisons, the size of the cells fell below the 12 square meter standard as set by the European Convention on Human Rights.

#### d. Arbitrary Arrest or Detention

The Constitution prohibits arbitrary arrest and detention, and the Government generally observed these prohibitions; however, several NGOs reported that some cantonal police forces arbitrarily detained asylum seekers (see Section 2.d.).

The cantons are responsible for handling most criminal matters, and procedures vary from canton to canton. The Swiss Federal Police Office has a coordinating role and relies on the cantons for actual law enforcement. The Federal Attorney General in Bern oversees inter-cantonal and international crimes. Corruption and impunity were not problems.

In general, a suspect may not be held longer than 24 hours before being presented to a prosecutor (or investigating magistrate)

who must bring formal charges or order release; however, asylum seekers and foreigners without valid documents may be held up to 96 hours without an arrest warrant. Release on personal recognizance or bail is granted unless the magistrate believes the person is dangerous or will not appear for trial. A suspect may be denied legal counsel at the time of detention but has the right to choose and contact an attorney by the time an arrest warrant is issued. In August, the Federal Criminal Court in Bellinzona confirmed that suspects detained under federal law were not entitled to legal support during the first preliminary hearing with the Federal Police. Legal counseling is allowed at a later stage when the suspects meet the investigative magistrate.

However, AI and refugee NGOs complained that detained asylum seekers were often effectively denied proper legal representation because they lacked the financial means to obtain legal counseling and, unless they are held for serious criminal offenses, the law does not provide for free legal assistance. The state provides free legal assistance for indigents who may be jailed pending trial.

Access to family members can be restricted to prevent tampering with evidence, but law enforcement authorities are obligated to promptly inform close relatives.

Investigations generally were prompt; however, in some cases investigative detention may exceed the length of sentence. Any lengthy detention is subject to review by higher judicial authorities. During the year, approximately one-third of all prisoners were in pretrial detention, and the average length of such detention was 50 days.

In the wake of a few much-publicized rape/murder cases by repeat offenders on furlough during the 1990s, on February 8, the electorate adopted a popular initiative demanding the incarceration for life without possibility of parole for sexual or violent offenders diagnosed as permanently untreatable. The proposition faced opposition from the Government, NGOs, and several constitutional experts who questioned its compatibility with the European Convention on Human Rights (ECHR). In September, the Justice Ministry opened public consultation on implementing proposals that purported to reconcile the demands of the popular initiative with ECHR's provision for regular judicial determination of the legality of detention. The draft legislation met with opposition from a majority of political parties, NGOs, as well as bar and medical associations.

#### e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary, and the Government generally respected this provision in practice.

Courts of first instance generally are local or cantonal courts. The Federal Penal Court in Bellinzona, which became operational on April 1, is the court of first instance for criminal offenses that are under the jurisdiction of federal authorities to investigate and prosecute. Citizens have the right to appeal, ultimately to the Federal Tribunal (Supreme Court). Trials involving minor offenses are generally heard by a single judge, more serious or complex cases by a panel of judges, and the most serious cases (including murder) by a jury.

The Constitution provides for the right to a fair trial, and an independent judiciary generally enforced this right. Trials usually were expeditious. The Constitution provides for public trials, including the right to challenge and to present witnesses or evidence.

The 2003 revised Military Penal Code (MPC) requires that war crimes or violations of the Geneva Convention be prosecuted only if the defendant has close ties with the country. Normal civilian rules of evidence and procedure apply in military trials. The MPC allows the appeal of any case, ultimately to the Military Supreme Court. In most cases, the accused used defense attorneys assigned by the courts. Any licensed attorney may serve as a military defense counselor. Under military law, the Government pays for defense costs.

There were no reports of political prisoners.

#### f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The Constitution prohibits such actions, and the Government generally respected these prohibitions in practice.

The law on telecommunication surveillance restricts wiretapping and the monitoring of e-mail to persons suspected of serious crimes. The legislation includes a list of offenses deemed serious enough to permit wiretapping, including money laundering, terrorism, and corporate crime.

Instances of forced sterilization of women continued to be the subject of public debate during the year. In December, Parliament adopted a federal law allowing sterilization only under strict conditions but rejected a proposal to pay financial compensation to victims of forced sterilizations and castrations. Such practices were used up to the 1970s primarily on young women of low social standing or with mental illnesses.

#### Section 2

Respect for Civil Liberties, Including:

#### a. Freedom of Speech and Press

The Constitution provides for freedom of speech and of the press, and the Government generally respected this right in practice and did not restrict academic freedom. An independent press, an effective judiciary, and a functioning democratic political system combined to ensure freedom of speech and of the press.

On July 22, a Zurich district court acquitted Frank Lubke, president of the David Centre Against Anti-Semitism in Zurich, of the charge of violating the anti-racism law. Lubke wrote an open letter to government officials and the press in November 2002 following the terrorist attacks in Mombassa, Kenya, which contained severe criticism of the Islamic religion.

#### b. Freedom of Peaceful Assembly and Association

The Constitution provides for freedom of assembly and association, and the Government generally respected these rights in practice.

On January 24, demonstrators protesting the World Economic Forum were allegedly subjected to police violence and humiliating treatment. According to media and NGO reports, demonstrators aboard a train bound for Davos were forced to exit when police used tear gas against them. Demonstrators were later held for more than 6 hours in a nearby fenced-off area. In April, a total of 37 demonstrators filed a lawsuit against several cantonal police forces, the Swiss army, German troops, and the Graubunden canton, claiming that these parties violated their freedom of movement, used coercion, and put their lives at risk. The lawsuit remained pending at year's end.

Authorities will reassess the case of two policemen involved in an April 2003 paint ball incident that injured a WTO demonstrator despite preliminary police hearings that cleared them. In November 2003, the Geneva cantonal Government called for additional investigations, while the Geneva prosecuting authorities launched a parallel criminal investigation against a police officer for negligent bodily harm. Both investigations were pending at year's end.

#### c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government generally respected this right in practice.

There is no official state church; however, most cantons financially support at least one of three traditional denominations--Roman Catholic, Old Catholic, or Protestant--with funds collected through taxation. Each canton has its own regulations regarding the relationship between church and state.

Groups of foreign origin are free to proselytize. Foreign missionaries must obtain a religious worker visa to work in the country. Such permits were granted routinely and without bias against any particular religion. However, the Federal Office of Immigration, Integration, and Emigration in a precedent case rejected the 2003 work permit applications for two Islamic clerics that the Islamic Center in Geneva filed with local authorities. The decision was appealed to the Justice Ministry's appeals body and remained pending at year's end.

The generally amicable relationship among religions in society contributed to religious freedom. However, negative reaction to immigration, the conflict in the Middle East, and terrorist acts by Muslim extremists in foreign countries fuel intolerance in radical and populist publications and occasionally in mainstream daily newspapers. The Swiss Observatory of Religions based in Lausanne reported that anti-Islamic and anti-Semitic feelings have increased over the last decade. Although physical violence was rare, most anti-Semitic and anti-Muslim remarks have largely been fueled by extensive media reports over the Israeli Palestinian conflict, the Holocaust Assets issue, and terrorist acts by Muslim extremists in foreign countries. The few journalists that engaged in anti-Zionist rhetoric later apologized. Nevertheless, other xenophobic and revisionist publications exist, sometimes using Internet websites based abroad to avoid prosecution.

According to statistics gathered by the Foundation Against Racism and Anti-Semitism, the total of reported incidents against foreigners or minorities was 94 in during the year. These figures include instances of verbal and written attacks, which were much more frequent than physical assaults (see Section 5).

On January 27, schools across the country held a day of remembrance for victims of the Holocaust. Education authorities said the aim was to remember the Holocaust and other forms of genocide committed in the past century and raise awareness of inhumane ideologies.

In April 2003, Muslim leaders expressed fears of a "witch-hunt" against the community, following government revelations that members of half a dozen militant Muslim groups are operating secretly in the country. These fears were increased in January when police arrested eight foreign nationals suspected of links to the May 2003 terrorist attacks in Saudi Arabia.

On April 10, a Muslim shop selling religious Islamic objects in Basel was destroyed by arson. Police officials could find no reason for the crime. The investigation continued at the end of the period covered by this report.

On April 26, the Zurich lawyer and honorary chairman of the Jewish religious community, Sigi Feigel, sued the political party Europa Partei Schweiz and claimed that it sponsored newspaper advertisements comparing Israel to Nazi Germany. The party, which is not represented in Parliament, ran advertisements in the daily Tages-Anzeiger the day after the killing of Hamas leader Abdel Aziz Rantisi calling on the country to cut off diplomatic relations and end military cooperation with Israel. The advertisements referred to "Israel, nation of the Jews" and stated, "with the exception of the gas chambers, all the Nazi instruments are being used against (Israel's) resident population." The party was being charged under antiracism laws by year's end.

For a more detailed discussion, see the [2004 International Religious Freedom Report](#).

#### d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The Constitution provides for these rights for citizens, and the Government generally respected them in practice. The Constitution prohibits forced exile, and the Government respected this right in practice. However, non-citizens convicted of crimes may receive sentences that include denial of reentry for a specific period following the completion of a prison sentence.

The Constitution provides for the granting of asylum or refugee status in accordance with the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol, and the Government has established a system for providing protection to refugees. Foreigners seeking protection from persecution may file an asylum application at any Swiss consular office, border post, airport, or one of the four regional refugee reception centers in Switzerland. The Federal Office for Refugees (FOR) decides the merits of each individual asylum application. During the year, the FOR received a total of 14,248 asylum applications, a drop of 32 percent over the previous year. At year's end, of the 79,374 people in the asylum process, 30 percent enjoyed refugee status, 29 percent were temporarily admitted, 22 percent were awaiting a decision on their asylum application, and 18 percent were awaiting repatriation.

The asylum law was amended to curb the misuse of asylum regulations and enable the rapid repatriation of uncooperative asylum applicants. The FOR may refuse to process the application of an asylum seeker who is unable to justify a lack of identity papers. In such cases, the rejected applicant must submit an appeal within 24 hours to stay deportation proceedings. NGOs contended that such a short time period did not constitute an effective remedy and therefore violated the ECHR. An asylum seeker may appeal a negative FOR decision of his application to the Asylum Appeals Commission (AAC), which is independent of the administration. If the AAC dismisses the appeal, the applicant must leave the country. Asylum seekers voluntarily departing before an officially set deadline may claim individual return assistance; after the deadline expires, repatriation is enforced.

In practice, the Government provided protection against the return of persons to a country where they feared persecution. The Government allowed rejected asylum seekers to stay temporarily for two reasons: The likelihood of political repression or armed conflict in their native country. However, NGOs accused the Government of expelling rejected asylum seekers in some cases when conditions in their native countries remained unfavorable. In April, Bern police authorities deported a Burmese citizen, who was immediately apprehended by local authorities and subsequently sentenced to a long prison sentence. The asylum application he filed in May 2003 had previously been rejected both by the FOR and the AAC.

In May, the Justice Ministry and the government of Vaud Canton agreed on a special review by the FOR of over 1,200 rejected asylum applications, mostly of refugees from former Yugoslavia who fled their homes during the 1990s. They had been living without residency permits in Vaud canton for several years, because its government did not follow federal instructions to repatriate rejected asylum applicants. In August, the FOR granted residency to more than 500 persons on grounds of personal hardship but ordered the repatriation of more than 500 individuals, causing a major controversy in the media and in the local political arena. Pressure by local politicians and NGOs forced the Federal Government to allow for a second review of the rejected applications involving cantonal officials and AI representatives, resulting in another 45 residency permits, but in December, the FOR insisted on the repatriation of more than 400 rejected applicants. AI criticized the FOR's handling of the dossiers as opaque and arbitrary.

The Government cooperated with the office of the U.N. High Commissioner for Refugees (UNHCR) and other humanitarian organizations in assisting refugees and asylum seekers. As part of the Budget Alleviation Program adopted in December 2003, the Government curtailed public welfare benefits and tightened deportation proceedings for rejected asylum seekers. Effective April 1, rejected asylum seekers whose application the FOR had refused to process were no longer entitled to social security benefits and could only claim minimum emergency assistance. The cantons, which are also responsible for deportation proceedings, determined and provided emergency assistance to rejected applicants, who were required to register with local immigration authorities in their designated canton in order to receive emergency assistance. However, in practice, only approximately 15 percent of rejected applicants registered with cantonal immigration authorities after April 1, reportedly because they feared detention pending their repatriation. On July 15, the Federal Tribunal unanimously ruled that the detention of rejected applicants pending their repatriation did not violate the ECHR.

In November, two cantonal courts made conflicting rulings on the eligibility for government emergency assistance of rejected asylum applicants who refuse to cooperate with authorities in their repatriation to their countries of origin. In Bern, the Administrative Court ruled that obstructive behavior was insufficient to deny the constitutional right to emergency assistance, but in Solothurn canton the Administrative Court in a similar case held that denying emergency assistance was legitimate to induce cooperation. However, on December 23, the Federal Tribunal ordered Solothurn cantonal authorities to keep providing

emergency assistance pending a thorough Federal Tribunal ruling in the case.

In a special session in May, the lower house began parliamentary debate of a controversial new amendment to the asylum law. The draft bill had already been partly overtaken by the tightened asylum regulations passed by Parliament in 2003. In July, in stark contrast to the established legislative process, the Justice Ministry introduced a set of additional changes to the ongoing revision of the asylum law, which the UNHCR sharply criticized and which provoked a public outcry by church, refugee, and humanitarian aid organizations. On August 25, the Cabinet adopted most of the proposed changes, which are expected to be submitted to the upper house for parliamentary debate in 2005.

The Government also provided temporary protection to 23,407 individuals who may not qualify as refugees under the 1951 Convention/1967 protocol. The 1999 amendment of the asylum law provides for the collective admission of victims of violence and authorizes the Cabinet to grant them temporary protective status.

The FOR used a list of approximately 40 "safe countries" of origin, the nationals of which did not enjoy refugee status. NGOs criticized the list as arbitrary because the Government did not publicly justify the listings and because they deemed the human rights record and the political situation in some of the listed countries unstable.

NGOs reported that police used excessive force against asylum seekers (See Section 1.c.).

### Section 3

#### Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitution provides citizens with the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections held on the basis of universal suffrage. Initiative and referendum procedures provide unusually intense popular involvement in the legislative process. In October 2003, in a fair and free election, the electorate chose a new federal parliament. Parties and candidates could nominate themselves freely.

Government information was available freely to all persons living in the country, including foreign media. There is no specific transparency law, but the Constitution requires that the Government inform the public on its activities. In December, Parliament adopted a new transparency law providing for public access to government documents.

There were 61 women in the 246-seat Federal Parliament and 1 woman in the 7-seat Federal Cabinet. At the cantonal level, the proportion of women representatives in legislatures has remained steady at around 24 percent in recent years. Women held approximately one-fifth of the seats in cantonal executive bodies.

There were three francophone members in the Federal Cabinet, and the representation of linguistic minorities in Parliament reflected their percentage of the population. A 2004 study commissioned by a minority lobby group regretted the diminishing importance of French and Italian in federal political bodies and the decreasing number of linguistic minorities among senior governmental management.

### Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A wide variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were cooperative and responsive to their views.

In major cities such as Zurich, Bern, and Basel, as well as in some cantons, an ombudsman heard citizens' complaints about wrongful government action. Not every ombudsman could proactively investigate alleged abuses of government authority but all accepted complaints from third parties. No ombudsman exists at the federal level.

### Section 5

#### Discrimination, Societal Abuses, and Trafficking in Persons

The Constitution and legislation prohibit discrimination on the basis of race, sex, language, or social status, and the Government generally enforced these prohibitions effectively, although some laws discriminate against women. The Constitution includes provisions for equal rights for persons with disabilities and for minorities.

#### Women

Violence against women was a problem. The law prohibits domestic violence but does not differentiate between acts committed against men and women. In its Annual Report, AI estimated that approximately 40 women died every year in the country as a result of violence suffered at home. A 1997 survey showed that one in five women age 20 to 60 suffered some form of domestic violence at least once in their lifetime.

Spousal rape is a crime. Prosecuting spousal abuse is a matter for the cantons, and statistical evidence remains uneven. Data from Zurich canton show that in 2003, police recorded 858 instances of domestic violence, 259 of which were repeat offenders. Police made 273 arrests, 13 on suspicion of spousal rape.

Victims of domestic violence may obtain help, counseling, and legal assistance from specialized government and NGO agencies, or from nearly a dozen hotlines sponsored privately or by local, cantonal, and national authorities. There were 1,375 women and children in 17 women's shelters across the country during 2003, but the shelter's operators estimated that nearly as many were denied access due to a lack of space and limited funding. There was a special unit dealing with domestic violence in the Interior Ministry's Federal Office for the Equality between Women and Men. The Crime Prevention Center, a planning unit of the umbrella organization of cantonal police forces, has established a best-practices checklist for police interventions and most cantonal police forces had specially trained domestic violence units. A majority of cantons also had special administrative units coordinating between law enforcement, prosecuting, and victim assistance bodies.

Since April 1, the Penal Code makes grievous forms of domestic violence, including repeated aggression, assault, threat, sexual assault and rape, a statutory offense. In six cantons--Appenzell, Bern, Lucerne, Neuchatel, Sankt Gallen, and Uri--police have the authority to temporarily ban abusive men from reentering the family premises. A study released during the year showed 10 percent of women polled suffered from physical violence in the previous 12 month.

Prostitution is legal for citizens and foreigners with valid work permits if the practitioners comply with taxation and other cantonal requirements. However, street prostitution remains illegal, except in certain areas specifically designated by local authorities. Every major city has such designated areas. The Penal Code criminalizes sexual exploitation and trafficking in women; however, trafficking in women remained a problem (see Section 5, Trafficking).

Forced sterilization of women was a concern (see Section 1.f.).

Sexual harassment in the workplace occurred but was limited. The law includes provisions aimed at eliminating sexual harassment and facilitating access to legal remedies for those who claim discrimination or harassment in the workplace. Sexual offenders face a fine or a prison sentence up to 10 years. Employers failing to implement the law face a maximum fine of \$32,000 (40,000 Swiss francs) or a 6-month prison sentence. Sexual harassment victims are protected against retaliatory dismissals. They can choose to be reinstated in their job position or file for 6-month salary compensation. Such criminal procedures only work if the complaint is filed before the end of dismissal period.

Although the Constitution prohibits all types of discrimination, and the law provides for equal rights, equal treatment, and equivalent wages for men and women, some laws continued to discriminate against women. A federal marriage law provides that in the event of a divorce, assets accumulated during the marriage will be divided equally; however, the Federal Tribunal ruled that the primary wage earner must be left with sufficient income to remain above the poverty level. Since the man was the primary wage earner in most marriages, when the income was too low to support both parties, it was usually the wife (and children) who was forced to survive on public assistance.

Immigrant women, who married Swiss husbands, but lived in the country for less than 5 years, risked deportation if they divorced their spouses. The 5-year residency requirement could be reduced to 3 years under exceptional circumstances. NGOs argued that this prevented women with marital problems from seeking help or leaving their husbands without incurring serious consequences. Police in different cantons considered factors such as the country of origin, education, and income levels of the immigrant women when deciding consequences.

The law includes a general prohibition on gender-based discrimination and incorporates the principle of equal wages for equal work; however, professional differences between men and women were evident. Women less often occupied jobs with significant responsibilities, and women's professional stature overall was lower than men's. Women also were promoted less than men and employers were less likely to pay women for training. According to a government study, women's gross salaries were 21 percent lower than men's in 2002. In July, the Government announced that in order to fight wage inequality it would start checking if its contractors paid equal wages for equal work. Companies in violation of the law risk an \$81,000 (100,000 Swiss francs) fine or losing their government procurement contract.

The labor law prohibits women from working in the first 8 weeks after giving birth, but no federal provision for maternity leave exists. The law does not provide for compensation; however, between 70 and 80 percent of working women have negotiated maternity benefits with their employers. Many private sector and most public sector employers voluntarily granted new mothers a paid leave of absence, commonly between 3 and 16 weeks. On September 26, the electorate in a national referendum approved new legislation granting working mothers a paid 14 week maternity leave at 80 percent of their salaries.

The Federal Office for Equality Between Women and Men (EBG) and the Federal Commission on Women worked to eliminate all forms of direct and indirect discrimination. A federal level interdepartmental working group continued to implement a 1999 action plan to improve the situation of women that includes measures that address poverty, decision-making, education, health, violence against women, the economy, human rights, the media, and the environment. To achieve its mission, the EGB allocated \$3.3 million (4.1 million Swiss francs) to different projects promoting gender equality. The office employed approximately 20 persons during the year.

Many cantons and some large cities have equality services mandated to handle gender issues. More than half of the cantons have an office in charge of promoting equality, but funding and personnel levels remained uneven. The majority of the cantons had commissions that reported to the cantonal Government.

#### Children

The Government has no special programs for children, and there is no special Governmental office for children's matters; however, the Government was strongly committed to children's rights and welfare. It amply funded a system of public education and need-based subsidies of health insurance. Education was free and compulsory for 9 years, from age 6 or 7 through age 16 or 17, depending on the canton. Some cantons offered a 10th school year. Almost all children attended school.

There was some abuse of children, although there was no societal pattern of such abuse. The federal and cantonal governments, as well as approximately 80 NGOs that defend children's rights, have devoted considerable attention in the last few years to child abuse, particularly sexual abuse. For convicted child sexual abusers, the law provides for imprisonment of up to 15 years. The statute of limitations is 15 years. In cases of severe sexual abuse, the statute does not take effect before the victim turns 25. If a court of first instance hands down a sentence before the stipulated time, the statute of limitations is suspended indefinitely.

Since January, the Swiss Conference of Cantonal Ministers of Education, the national umbrella organization of cantonal education ministries, has kept a registry of schoolteachers who had their cantonal teaching license revoked in an effort to prevent them from finding new teaching positions in another canton. The blacklist is subject to local data protection requirements and does not record the reason why a license was revoked. However, some cantons decided not to submit information on revoked teaching licenses to the national registry.

With respect to the prosecution of child sexual abuse abroad, the law provides for prosecution in Switzerland only if the act is considered a crime in the country in which it took place. The 2003 revisions of the Penal Code will not take effect until the cantons implement the changes into cantonal law.

Under the law, the production, possession, distribution, or downloading from the Internet of hardcore pornography involving children, animals, or violence carries heavy fines or a maximum sentence of 1 year in prison. However, viewing child pornography on the Internet is not a criminal offence. Police in September arrested eight persons suspected of child molestation and production of child pornographic material. As part of a worldwide investigation, police searched more than 400 homes and examined more than 100,000 photo and video files. The raid was the biggest operation against child pornography on the Internet since the 2002 operation "Genesis", which led to the investigation of more than 1,000 persons. As part of Genesis, Bern judicial authorities sentenced 14 persons to suspended prison terms and fined 54 individuals between \$400 and \$6,400 (500 and 8,000 Swiss francs). In Zurich, 124 persons were fined between several hundred and a few thousand Swiss francs.

In an effort to combat child pornography on the Internet more effectively, the Federal Police established in 2003 the Internet watch body Cycos, which takes tips from the public and actively searches the Internet for suspicious content. According to police, Cycos handled approximately 500 complaints per month. The police were able to take off certain content from some sites but failed to shut down any offending website.

Children of migrant seasonal workers were not permitted automatically to join their parents. Children of foreigners who worked as migrant laborers only were permitted to visit on tourist visas for a period of 3 months at a time. After 3 months, they must return to their home country for 1 month.

#### Trafficking in Persons

The law prohibits sexual exploitation and trafficking in persons; however, some women were trafficked into the country and forced into prostitution or domestic servitude.

Trafficking in persons can carry a prison sentence of up to 20 years and coercing a person into prostitution is punishable with up to 10 years in prison. In 2002, the Federal Tribunal decided that hiring women, even consenting women, from abroad to engage in prostitution qualified as human trafficking if their abusers exploited a situation of distress. The prosecution of illegal prostitution and trafficking in persons normally falls under the authority of the cantons; cases linked to organized crime are under the jurisdiction of the federal agencies. In 2003, authorities made 12 convictions for human trafficking and forced prostitution. The Coordination Unit against the Trafficking in Persons and Smuggling of Migrants, which is tied to the Federal Office of Police (BAP), coordinates and monitors all Swiss anti trafficking efforts, including a federal interagency task force. In addition, the BAP has two anti-trafficking subsections, one within the international cooperation and investigation division and the other tied to the domestic intelligence division. Swiss authorities were active in international law enforcement activities and took the lead in coordinating several international trafficking investigations.

Switzerland is primarily a country of destination, and secondarily transit, for women trafficked for the purposes of sexual exploitation and domestic servitude. Federal police estimated that between 1,500 and 3,000 potential victims of human trafficking were in the country. However, since Swiss federalism dictates that alien registration and enforcement be handled at the cantonal level, there were few reliable statistics on the extent of the trafficking problem. According to authorities, most



persons trafficked originated in Thailand, parts of Africa, or South America. An increasing number of trafficked women arrived from Eastern Europe, particularly Hungary, Russia, Ukraine, or other states of the former Soviet Union. Police figures indicated that approximately 14,000 prostitutes worked in the country both legally and illegally. More than half worked in Basel, Bern, Zurich, Lucerne, Geneva, and Ticino.

Traffickers often forced victims into prostitution and in many cases subjected them to physical and sexual violence, threatened them or their families, encouraged drug addiction, withheld their documents, and incarcerated them. Many victims were forced to work in salons or clubs to pay for travel expenses and forged documents and found themselves dependent on the traffickers. Generally the victims were unable to read, write, or speak the country's languages and were afraid to seek help from the authorities.

Since the mid-1990s, a growing number of salons and clubs have appeared in which women registered as artists engaged in illegal prostitution. Authorities suspected that traffickers were bringing some of these "artists" into the country. Police monitoring was difficult because artist visas (also called the "L" residency permits, which is only valid for 8 months) include an allowance for a short work period during which individuals may engage in some form of self-employed activity. According to the Chief of the Geneva vice squad, police had no legal means of preventing cabaret dancers from prostituting themselves after work hours but tried to prevent physical abuses against prostitutes. Smaller prostitution networks also existed and often involved relatives of foreign families established in the country, or members of the same ethnic groups.

Trafficking victims may seek help from centers providing shelter, counseling, legal assistance, and medical aid. In 2003, these centers assisted 64 victims. Federal and cantonal governments continued to provide funding to NGOs and women's shelters, and authorities may grant temporary residency permits on a case by case basis to victims willing to testify in court. In cases of serious hardship, a federal ordinance allows cantonal police to grant a residency permit to victims of sexual exploitation or forced labor. In August, the Federal Office of Immigration, Integration and Emigration, sent to all cantonal immigration authorities a set of guidelines on offering temporary residency status to trafficking victims in order to make this process both more transparent and in accord. Despite the range of protections, NGOs alleged that some potential trafficking victims were not recognized as such and repatriated to their country of origin without due respect for the safeguards under the law.

The federal police and immigration authorities encouraged cantonal authorities to them to take a more tolerant approach toward delaying deportation to allow for victim counseling and an increased likelihood that victims may testify against traffickers. NGOs and authorities in Zurich have worked together to improve the protection and security of victims by regulating the procedures for identifying and referring victims for assistance. Efforts to establish a binding "code of cooperation" failed. Efforts to strengthen cooperation between NGOs and local authorities were also underway in other cities, such were Bern, Basel, and Lucerne at year's end.

The law safeguards victims' rights in criminal prosecutions with special rules for trial procedures and for compensation and redress. Trafficking victims who testified enjoyed special protection of their identity and could request the trial to take place behind closed doors and a confrontation with the defendant avoided.

The Government funded several anti-trafficking information and education campaigns in Eastern Europe, the former Soviet Union, Asia, and South America. The Government also continued to partially fund the Women's Information Center, a victim assistance NGO, that has established an international network of contacts for victim repatriation and distributes trafficking information in origin countries. The Swiss embassy in Moscow has tightened visa processing and, together with a local NGO, has implemented awareness raising seminars for its staff, which have been replicated at Swiss embassies in Kiev and Bogota. Consular officials routinely undergo trafficking-awareness raising programs before being posted abroad.

#### Persons with Disabilities

The law prohibits discrimination against persons with disabilities in employment, education, access to health care, or in the provision of other state services, and it was generally enforced. Since January 1, the law mandates access to public buildings and government services for persons with disabilities, and the Government generally enforced these provisions in practice. The new Federal Equal Opportunity Office for Disabled People promoted awareness of the law but had no formal mandate to monitor cantonal enforcement. The office had a staff of two and disposed of an annual budget of \$805,000 (1 million Swiss francs), of which \$282,000 (350,000 Swiss francs) was earmarked for nationwide projects. According to the NGO Equality Handicap, most complaints of discrimination concerned labor issues, education, and access to public buildings.

During the year, the Swiss National Science Foundation published a study revealing that one in five disabled persons lived near or below the poverty level, was often alone, and relied on help from outsiders. Another survey on labor market integration found that persons with disabilities held approximately one percent of job positions; however, companies had only limited knowledge of available government compensatory schemes.

#### National/Racial/Ethnic Minorities

According to statistics gathered by the Foundation Against Racism and Anti-Semitism, the total number of reported incidents directed against foreigners or minorities was 94 during the year. These figures included instances of verbal and written attacks, which were much more common than physical assaults. Investigations of such attacks generally were conducted effectively and

led, in most cases, to the arrest of the persons responsible. Persons convicted of racist crimes commonly were sentenced to between 3 days and 3 years imprisonment and a fine of up to \$32,000 (40,000 Swiss francs). Between 1995 and 2002, the authorities opened 218 criminal proceedings under anti racism legislation, 95 of which ended in a first instance conviction. In 2002, 9 persons were convicted of racial discrimination.

During the year, neo-Nazi, skinhead, and other extremist organizations continued to attract police and Government attention because of such groups' organization at international levels, the violence they commit, and the youth of the group members. However, a Federal Police report published in August concluded that extremist groups posed no real threat to domestic security even if such groups have repeatedly engaged in minor assaults and vandalism at the local level. Although the number of right-wing extremists has risen to approximately 1,000 over the last few years, the report deemed the potential for violence emanating from left-wing extremist groups as considerably higher.

The number of incidents involving skinheads decreased from approximately 120 incidents in 2002 to about 100 in 2003. These incidents involved more violence and were more frequently directed against foreigners rather than property.

In March, a Bern district court sentenced the three neo-Nazis accused of killing 19-year-old Marcel von Allmen in 2001. The main culprit was sentenced to life in prison for homicide and the two accomplices received 16-year prison terms. The fourth defendant involved in the killing has already been tried and sentenced as a juvenile.

There were a few reported cases during the year of violent confrontations between skinheads and young foreigners. The night of August 14/15, approximately 100 skinheads and young foreigners clashed in the town of Olten, leaving at least 8 persons injured.

The Anti-Racism Law criminalizes racist or anti-Semitic expression, whether in public speech or in printed material. On May 27, the Federal Tribunal further delineated the scope of the law by broadly defining public as opposed to private speech. The court ruled that a 1999 Nazi propagandist lecture held before a skinhead gathering that was closed to the public constituted public speech because the speaker was not personally familiar with the listeners. The Court thus blunted a common ploy among right-wing activists to organize by-invitation-only events to circumvent the public speech clause of the anti-racism legislation. Henceforth, all racist speech that could be heard by third parties, with no personal bonds to the speaker, is considered public and therefore punishable under the law.

On September 7, the Muslim community in the country and the Federal Commission against Racism condemned a controversial advertisement about Muslim birth rates run by a group close to the rightwing Swiss People's Party (SVP). Its publication appeared less than 3 weeks before the country was due to vote on easing restrictions on citizenship for second- and third generation foreigners. Using extrapolated figures on the Muslim population trends in the country, the publication suggested that the number of Muslims in the country would double every 10 years, making up 72 percent of the population by 2040. While the SVP denied responsibility and funding, its president and many members welcomed the advertisement. While the Muslim community dropped the idea of lodging formal complaint, a Bern lawyer filed a lawsuit against the promoters for racial discrimination. Several legal experts expressed opposing views about the advertisement's legality.

The Department of the Interior's Federal Service for the Combating of Racism, which began operation in 2001, manages the Federal Government's "Fund Projects against Racism and for Human Rights" with a budget of \$12.1 million (15 million Swiss francs) for the 2001 to 2005 period. An annual budget of \$403,000 (500,000 Swiss francs) has been earmarked for the establishment of new local consultation centers to assist victims of racial or religious discrimination. Approximately 130 consultation centers or contact points existed in the country. In addition, the Federal Service for the Combating of Racism sponsored a variety of educational and awareness-building projects to combat racism, xenophobia, and anti-Semitism. Over \$805,000 (1 million Swiss francs) was spent to support youth projects.

Victims of racial discrimination may appeal a national court ruling either to the ECHR or the U.N. Committee on the Elimination of Racial Discrimination (CERD). Cases must first be litigated before national courts. Citizens have the choice of appealing a national court ruling to either the CERD or the ECHR but may not appeal a U.N. decision to the ECHR or vice versa.

In January, the European Commission against Racism and Intolerance in its third report on Switzerland stated that the 2003 federal law on itinerant trade, which replaced the numerous different cantonal regulations and provides for a 5-year trade permit valid for the entire country, improved the situation for traveling Jenish; however, the report also held that the provision of sufficient permanent and transit stopping places for travelers remained a cause of concern.

In July 2003, the Federal Tribunal ruled that cantonal practices of holding secret ballots to decide individual applications for citizenship were unconstitutional. In two separate unanimous rulings, the court decided that naturalization decisions must be neither arbitrary nor discriminatory, nor included secret balloting. The two rulings triggered a national debate. As a consequence, the six cantons concerned have discontinued the practice of secret balloting, and examining bodies of citizenship applications across the country are now obliged to justify a rejection. The rulings produced some confusion, as the Federal Tribunal did not rule on the constitutionality of town hall meetings deciding citizenship applications by a show of hands, a common practice. On September 26, the electorate in a national referendum rejected two constitutional amendments to facilitate the naturalization of second-generation immigrants and automatically grant citizenship to the third-generation. The number of Swiss naturalizations fell slightly from 36,500 in 2002 to 35,400 in 2003.

Section 6  
Worker Rights

a. The Right of Association

The law allows all workers, including foreigners, to associate freely, form and join unions of their choice, and to select their own representatives, and workers exercised these rights in practice. Unions operated independently of the Government and political parties. Approximately 25 percent of the work force was unionized.

The law protects workers from acts of antiunion discrimination, and the Government generally respected this provision in practice. In May 2003, the Swiss Trade Union Council (STUC) filed a complaint with the International Labour Organisation (ILO) arguing that legal provisions for abusive dismissals do not sufficiently protect activists from antiunion discrimination. The law provides for a maximum compensation of six months' worth of wages but not for reinstatement. On March 31, the Government asked the ILO to dismiss the STUC complaint on the grounds that Swiss legislation was fully compliant with the relevant ILO Convention. An ILO decision remained pending at year's end.

b. The Right to Organize and Bargain Collectively

The Constitution provides for the freedom to organize and bargain collectively, and unions exercised these rights in practice. Periodic negotiations between employer organizations and unions determine wages and settle other labor issues at the local, regional, or, infrequently, at the industry level. Roughly half of the entire work force is covered by such collective labor agreements.

Non-syndicated firms generally abided by the terms of their industries' collective labor agreement. The Government has the authority to declare a voluntary collective labor agreement binding if employer organizations and unions representing a majority of firms and workers in a given industry jointly demand it. With the gradual opening of the labor market to workers from the EU ending the preferential treatment of Swiss workers, effective June 1, the quorum to declare a voluntary collective labor agreement binding was lowered to 30 percent of employers and 30 percent of employment contracts. The Federal Government and the 26 cantons have each set up special committees, comprising the Government, employer associations, and unions, to monitor the labor market and prevent dumping practices by EU firms or workers.

The Constitution provides for the right to strike, and workers exercised this right in practice. The Government is allowed to curtail the right to strike of federal public servants only for reasons of national security or safeguarding foreign policy interests, but public servants were still denied the right to strike in some cantons and many communes.

There are no export processing zones.

c. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor, including by children, and there were no reports that such practices occurred.

d. Prohibition of Child Labor and Minimum Age for Employment

The law protects children from exploitation in the workplace, prohibiting forced or compulsory labor and setting acceptable working conditions, and the Government effectively enforced these provisions in practice.

The minimum age for the full-time employment is 15 years, and children generally remained in school until this age. Children over 13 years of age may be employed in light duties for not more than 9 hours per week during the school year and 15 hours otherwise. The employment of youths between the ages of 15 and 20 was regulated strictly; they were not allowed to work at night, on Sundays, or in hazardous or dangerous conditions.

The Economic Ministry (SECO) monitors the implementation of child labor policies but actual enforcement is the responsibility of the cantonal labor inspectorates; government officials inspected companies allegedly violating the law.

e. Acceptable Conditions of Work

There was no national minimum wage, which resulted in low wage structures for unskilled and service industry workers; however, some of the voluntary collective labor agreements contain clauses on minimum compensation.

The law sets a maximum 45-hour workweek for blue- and white-collar workers in industry, services, and retail trades, and a 50-hour workweek for all other workers. The law prescribes a rest period of 35 consecutive hours plus an additional half-day per week. Annual overtime is limited by law to 170 hours for those working 45 hours per week and to 140 hours for those working 50 hours per week. The Government effectively enforced these regulations.

The Labor Act and the Accident Insurance Act contain extensive regulations to protect worker health and safety. SECO and cantonal labor inspectorates held responsibility for their implementation. There were no reports of lapses in the enforcement of these regulations. Workers have the right to remove themselves from work situations that endanger health or safety without jeopardy to their continued employment.